



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: De La Rue Giori, SA--
Request for Reconsideration
File:
B-225447.3
Date:
June 15, 1987

DIGEST

Prior decision is affirmed on reconsideration where protester merely reiterates previously denied arguments and has not shown any error or fact or law that would warrant reversal or modification of previous decision.

DECISION

De La Rue Giori, SA requests reconsideration of our March 19, 1987 decision, De La Rue Giori, SA, B-225447, 87-1 C.P.D. ¶ 310, denying its protest of the award of a contract to Hamilton Tool Company under request for proposals (RFP) No. BEP-85-73(N), issued by the Bureau of Engraving and Printing, Department of the Treasury. The prior decision is affirmed.

The RFP solicited the design, fabrication, installation, testing, and evaluation of a web intaglio currency press designed to print the face and back image of U.S. currency in one pass through the press--a capability that would render the press the first of its kind to be put into production. The principal issue in its protest, as Giori itself recognized, was whether its technical proposal was properly evaluated in the area of project management, one of five technical evaluation criteria set forth in the RFP. Specifically, the protester contended that, although prior to the submission of proposals it had begun development of a press such as that required under the subject solicitation and had, thus, completed start up activities for the project, the Bureau improperly failed to credit Giori's proposal with any of the five possible points allocated for the project management subcriterion, "start up activities." Giori further alleged that the conduct of the procurement was unfair in that the Bureau orally requested and obtained a third best and final offer (BAFO) from both of the other final competitors for the contract but did not afford Giori the same opportunity, and that the Bureau violated the

Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.611(a) (1986), because it failed to confirm the oral request for BAFOs in writing.

We denied the protest on the basis of our finding that the Bureau acted within its discretion in evaluating proposals in accordance with the evaluation criteria as set forth in the RFP, upon which basis it determined that award should be made to Hamilton since Hamilton submitted the technically superior proposal. We further concluded that Giori's allegation that it was not afforded an opportunity to submit a third BAFO was without merit because the record indicated to the contrary, and even though the agency's failure to follow its oral request with a written confirmation as required by the FAR was a procedural deficiency, it did not render the procurement fatally flawed since the record indicated that all offerors including Giori had notice of the request and responded to it.

In its request for reconsideration, Giori contends that we (1) failed to address properly the principal basis of its protest--that is, that the Bureau improperly scored Giori's proposal in the area of start up activities; (2) inaccurately represented the facts concerning the Bureau's "alleged" request for third BAFOs; and (3) did not address Giori's allegation that the Bureau failed to justify its award of the contract to a higher priced offeror.

In its request for reconsideration, Giori asserts that our denial of its protest concerning the evaluation of its technical proposal under "start up activities" is flawed because it conflicts with facts recited elsewhere in the decision. Giori has constructed its factual "conflicts" by paraphrasing our decision, selectively quoting from it and attributing to our Office as its own factual findings statements we quoted from Giori's technical proposal and agency documents.

We noted in our March 19 decision that the RFP clearly stated under the section entitled, "Evaluation Factors for Award," that the primary objective of the evaluation of proposals was to insure selection of the source that "affirmatively demonstrates in its written proposal that it offers optimum satisfaction with regard to performance, schedule and cost." (Emphasis in original.) We further noted that Giori failed to address the matter of start up activities in its proposal, even after the Bureau on three separate occasions during discussions directed the protester's attention to the weakness of its proposal in that area and specifically requested Giori to "provide additional information on how you intend to manage 'start up activities'" (Emphasis in original.)

However, Giori's only written response to that solicitation requirement and the Bureau's requests for additional start up information was provided in a telex stating, in essence, that the firm was working on a press with printing capabilities required by the Bureau and was in the process of conducting developmental tests on that product. No specific details or information regarding the subject of start up activities for building and providing a press for the Bureau's use was ever written in the proposal. Thus, contrary to Giori's statement in the request for reconsideration that "its protest is simply that its proposal was not evaluated on the same basis as those of other offerors with references to the criteria of 'start up activities,'" our prior decision explained that under the provisions of the RFP, the agency could not fairly give Giori full credit for that requirement (or for other elements of the project management plan requirements) because Giori never presented as a part of its proposal a complete written response for that evaluation criterion. Moreover, we have held that regardless of how low in price and capable an offeror may be, technical evaluations are based on the information submitted in proposals, and the offeror assumes the risk of having its proposal rejected if it does not submit an adequately written proposal. Henderson Aerial Surveys, Inc., B-215175, Feb. 6, 1985, 85-1 C.P.D. ¶ 145 at 3; Twin City Construction Co., B-222435, July 25, 1986, 86-2 C.P.D. ¶ 113 at 3.

In our previous decision, we also considered and denied Giori's allegation that the Bureau did not afford the firm an opportunity to submit a third BAFO as it did with respect to other offerors. Giori asserts that we erred in concluding that the agency did not violate the FAR by failing to confirm, in writing, its oral, third request for BAFOs, and in so holding, we "condoned" such action not only by the Bureau but other federal agencies. Giori's argument is incorrect.

The conclusion of the decision is devoted to an explanation of why in our view the record did not support Giori's assertion that no oral request for a third BAFO was ever made of it, and we end that discussion with the statement:

"... while the agency's failure to follow the oral request with a written confirmation was a procedural deficiency, it was not prejudicial to any offeror since all had notice of the request and responded to it."

In its request for reconsideration, Giori also seeks to reargue the underlying issue of whether the agency did, in

fact, orally request of it a third BAFO. Such a reargument provides no basis for reconsideration. See Federal Contracting Corporation--Request for Reconsideration, B-224064.2, Nov. 3, 1986, 86-2 C.P.D. ¶ 512.

Finally, Giori's charge that our decision did not address its protest allegation that the Bureau failed to justify the award based on a higher priced offer is without merit since that was not an issue initially raised in Giori's protest. The protest alleged that the Bureau did not "base the award on the factors set forth in [the RFP's] evaluation criteria," and as an example pointed to the fact that award was made based on a higher priced proposal. In our decision, we noted that the Bureau evaluated offers based on the written proposals in accordance with the evaluation scheme set forth in the RFP. Since cost considerations were subordinate to technical considerations, it was not improper for the Bureau to make award based on a higher priced technically superior offer.

Since the protester has not shown any error of fact or law in our prior decision, it is affirmed.

for *Harry R. Van Cleave*
Comptroller General
of the United States